

# Dealing with Risky Events

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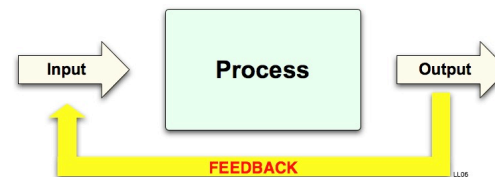
# Arguments from Event Organizers

- Why so much insurance
- I don't have to have that much for others
- Your asking me for more than you ask of others
- We need to use our standard contract
- We need you to cover us as additional insured



# Standardize the Process

- Takes away arguments
- Shows you are not making it up as you go
- Justifies insurance requirements that differ from one event to another.
- Assures you have protected your agency (CYA).
- You don't need to review contracts and negotiated changes starting point is in your favor.



# Requirements for Events

- Indemnification
- Insurance
- Other Standard Contractual Requirements



# Indemnify, Defend & Hold Harmless

- Indemnification must be broad, yet specific. Courts will only make insurer indemnify for items specifically required by the indemnification language.
- Defend, or indemnify cost of defense?
- Hold Harmless keeps subrogators at bay.



# Indemnification is #1

You want to protect your agency from paying for a loss that someone else caused.

- Indemnification requires another party you are doing business with to reimburse your costs of claims that arise out of their activities.
- Whether or not they have insurance.
- Insurance is just a way to show they can make good on this promise.



# Insurance

- Types of coverage – different events need different types of insurance
- Limits – based on risk of event, maximum probable loss and extent you are willing to pay for claims caused by event
- Term of insurance requirement
- Certificates of Insurance
- Additional Insured Status



# What is Additional Insured Status

- Adds you to the definition of insured on the policy held by the other party.
- You are not at the same level as the Named Insured, but you are covered like a partner or officer or employee of the corporation.
- Different than being an “indemnitee”, which is probably what you want to be.





# What does AI do for you

- If a suit is filed against you for something:
  - Covered by the indemnification agreement; and
  - Covered by the policy; and
  - The Insured on the policy has some negligence,

Then you can tender that claim to the insurance company.



# Why do I Want to Be AI

- Because my insurance agent says I always want to be AI of anyone I work with.
- Because I want the other party's insurer to cover claims, so I don't have to turn the claim into my insurer.



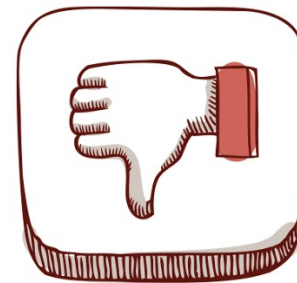
# What AI does not do

- Does not expand the coverage. (Defense inside/outside limits)
- Does not increase the limits per occurrence or in the aggregate.
- Does not involve you in defense strategy.
- Does not reserve your settlement rights.
- Does not waive subrogation against your friends.



# Cons of AI Status

- Unknown Insurer
- Loss of Choice of Defense
- Loss of Settlement Authority
- Possible loss of Governmental Immunity
- Possible loss of Tort Caps
- Required Waiver of Subrogation Rights
  - Suing your friends
  - Suing your insurer
- “Other Insurance” clause may negate coverage



# Using Contractual Liability

Term in insurance policy which recognizes policy holder's obligations to others

- Includes obligation to indemnify
- Provided automatically in most policies (may need to be endorsed)
- Allows you to be reimbursed by the insurer, rather than depend on their insurance to defend and pay the claim



## ISO CGL “Insured Contract”

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

# Contract Language

- Additional Insured
  - EO will indemnify, defend and hold harmless agency for any and all claims, suits...
- Contractual Liability
  - EO will indemnify agency for all judgements and costs associated with any and all claims, suits or..., including the cost of defense...



# Contractual Liability Issues

- As an indemnitee, your defense costs are damages, and are therefore INSIDE the limits. If there is a risk of an expensive lawsuit, require higher limits, including aggregate, and/or limits on a per event basis.
- Contractual liability does not automatically apply to Personal & Advertising injury.
- Some policies have modified or deleted paragraph f. of the definition of “insured contract”.



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**BEWARE CG 21 39!!!**

# To Be, Or Not To Be

- What is important to you
  - Do you want to let someone else deal with the claim
  - Do you want to control the defer



# Other Contractual Requirements

- Many county/city attorneys have a list of required terms for all contracts.
- Waiver and Release requirements
- Event organizer and its agents not employees or volunteers to the county/city/district.
- Volunteer requirements.
- Drone use requirements



# Policy v. Ordinance

- Policy provides more flexibility
- Ordinance can provide automatic indemnification and contractual liability



## Contractual Liability, Again...

d. An obligation, as required by ordinance, to indemnify a municipality,

## Contractual Liability, Again...

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

# Facility Use and Vendor Agreements

- Have standard contract
- Standardize insurance requirements based on risk

<u>TYPE OF EVENT</u>	<u>Activities</u>	<u>RISK LEVEL</u>	<u>ADDITIONAL COVERAGE REQUIRED</u>
Private Gatherings and Parties	Under 100 attendance, no admission charge, "pot luck", prepackaged or catered food only	Minimal	None
	Food prepared on-site	Low	Products Liability
	Over 100 attendance	Low	None
Meetings open to the Public	Under 100 attendance, no admission charge, "pot luck", prepackaged or catered food only	Minimal	None
	Food prepared or sold on-site	Low	Products Liability
	Admission charge	Low	
Shows and Plays	Under 500 attendance, prepackaged food only	Minimal	None
	Food prepared or sold on-site	Low	Products Liability

# Particularly Risky Events

- Rodeo
- Demolition Derby
- Bicycle Races
- Running and Triathlon Events on roads
- Fireworks Displays
- Auto, motorcycle and ATV racing
- Carnivals, Bungee Jumping and Zip Lines
- Others?
  - These types of events are generally excluded on a liability policy, requiring a special events policy to be used to cover them.



# Considerations When Assessing Risk

- Risk to Participants, can waivers be used?
- Risk to observers and public, can waivers be used?
- Events on roadways
- Minors involved and at risk
- Animals involved (equine event immunity)
- Food served that is not pre-packaged?
- Liquor served?

## Options for EO's to Insure

- **Use the insurance they have for their business.** The policy may need to be endorsed if their event activity differs from their business activity.
- **Have an agent get a policy.** Your requirements will help them here.
- **Use your TULIP.** If your entity has one set up.
- **Use on-line special events websites.** Many of these are broader than TULIP, and have options to be used like a TULIP.

# Helping EO with Requirements

- BE CAREFUL – You are not an insurance agent
- They may have insurance already
- TULIP can be used to assist event organizer
- Other special event insurance options are readily available



# Questions?

- Thank You!